

## Internal Revenue Service, Treasury

## § 1.362-2

if a corporation, a party to a reorganization, exchanges property in pursuance of the plan of reorganization solely for stock or securities in another corporation, a party to the reorganization. This provision includes only stock and securities received in connection with a reorganization defined in section 368(a). It also includes non-voting stock and securities in a corporation, a party to a reorganization, received in a transaction to which section 368(a)(1)(C) is applicable only by reason of section 368(a)(2)(B).

### § 1.362-1 Basis to corporations.

(a) *In general.* Section 362 provides, as a general rule, that if property was acquired on or after June 22, 1954, by a corporation (1) in connection with a transaction to which section 351 (relating to transfer of property to corporation controlled by transferor) applies, (2) as paid-in surplus or as a contribution to capital, or (3) in connection with a reorganization to which part III, subchapter C, chapter 1 of the Code applies, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain recognized to the transferor on such transfer. (See also § 1.362-2.) See § 1.460-4(k)(3)(iv)(B)(2) for rules relating to adjustments to the basis of certain contracts accounted for using a long-term contract method of accounting that are acquired in certain transfers described in section 351 and certain reorganizations described in section 368(a).

(b) *Exceptions.* (1) In the case of a plan of reorganization adopted after October 22, 1968, section 362 does not apply if the property acquired in connection with such reorganization consists of stock or securities in a corporation a party to the reorganization, unless acquired by the exchange of stock or securities of the transferee (or of a corporation which is in control of the transferee) as the consideration in whole or in part for the transfer.

(2) In the case of a plan of reorganization adopted before October 23, 1968, section 362 does not apply if the property acquired in connection with such reorganization consists of stock or securities in a corporation a party to the reorganization, unless acquired by the

issuance of stock or securities of the transferee (or, in the case of transactions occurring after December 31, 1963, of a corporation which is in control of the transferee) as the consideration in whole or in part for the transfer. The term *issuance of stock or securities* includes any transfer of stock or securities, including stock or securities which were purchased or were acquired as a contribution to capital.

[T.D. 7422, 41 FR 26569, June 28, 1976, as amended by T.D. 8995, 67 FR 34605, May 15, 2002]

### § 1.362-2 Certain contributions to capital.

The following regulations shall be used in the application of section 362(c):

(a) Property deemed to be acquired with contributed money shall be that property, if any, the acquisition of which was the purpose motivating the contribution;

(b) In the case of an excess of the amount of money contributed over the cost of the property deemed to be acquired with such money (as defined in paragraph (a) of this section) such excess shall be applied to the reduction of the basis (but not below zero) of other properties held by the corporation, on the last day of the 12-month period beginning on the day the contribution is received, in the following order—

(1) All property of a character subject to an allowance for depreciation (not including any properties as to which a deduction for amortization is allowable),

(2) Property with respect to which a deduction for amortization is allowable,

(3) Property with respect to which a deduction for depletion is allowable under section 611 but not under section 613, and

(4) All other remaining properties.

The reduction of the basis of each of the properties within each of the above categories shall be made in proportion to the relative bases of such properties.

(c) With the consent of the Commissioner, the taxpayer may, however, have the basis of the various units of property within a particular category adjusted in a manner different from the general rule set forth in paragraph (b)

of this section. Variations from such rule may, for example, involve adjusting the basis of only certain units of the taxpayer's property within a given category. A request for variations from the general rule should be filed by the taxpayer with its return for the taxable year for which the transfer of the property has occurred.

**§ 1.362-4 Limitations on built-in loss duplication.**

(a) *Purpose and scope*—(1) *In general.* [Reserved]

(2) *Intercompany transactions.* For rules relating to the application of section 362(e)(2) to transfers between members of a consolidated group on or after October 22, 2004, see § 1.1502-80(h).

(b) [Reserved]

[73 FR 53948, Sept. 17, 2008]

**§ 1.367(a)-1 Transfers to foreign corporations subject to section 367(a): In general.**

(a) through (d)(2) [Reserved]

(3) [Reserved] For further guidance, see § 1.367(a)-1T(d)(3).

(d)(4) through (g) [Reserved]

[T.D. 9441, 74 FR 348, Jan. 5, 2009]

**§ 1.367(a)-1T Transfers to foreign corporations subject to section 367(a): In general (temporary).**

(a) *Purpose and scope of regulations.* These regulations set forth rules relating to the provisions of section 367(a) concerning certain transfers of property to foreign corporations. This section provides general rules explaining the effect of section 367(a)(1) and describing the transfers of property that are subject to the rule of that section. Section 1.367(a)-2T provides rules concerning the exception from the rule of section 367(a)(1) for transfers of property to be used in the active conduct of a trade or business outside of the United States. Rules concerning the application of section 367(a)(1) to transfers of stock or securities are provided in § 1.367(a)-3, while § 1.367(a)-4T provides special rules regarding other specified transfers of property. Section 1.367(a)-5T describes types of property that are subject to the rule of section 367(a)(1) regardless of whether they are transferred for use in a trade or business. Section 1.367(a)-6T provides rules

concerning the application of section 367(a) to the transfer of a branch with previously deducted losses. Finally, § 1.367(a)-7T contains transitional rules concerning transfers of intangible property to foreign corporations made after June 6, 1984 and before January 1, 1985. Rules explaining the operation of section 367(d), concerning transfers of intangible property pursuant to an exchange described in section 351 or 361, are provided in § 1.367(d)-1T. Rules concerning the reporting requirements of section 6038B are provided in §§ 1.6038B-1 and 1.6038B-1T.

(b) *General rules*—(1) *Foreign corporation not considered a corporation for purposes of certain transfers.* If a U.S. person transfers property to a foreign corporation in connection with an exchange described in section 332, 351, 354, 355, 356, or 361, then pursuant to section 367(a)(1) the foreign corporation shall not be considered to be a corporation for purposes of determining the extent to which gain shall be recognized on the transfer. Section 367(a)(1) denies nonrecognition treatment only to transfers of items of property on which gain is realized. Thus, the amount of gain recognized because of section 367(a)(1) is unaffected by the transfer of items of property on which loss is realized (but not recognized). The transfers of property that are subject to section 367(a)(1) are further described in paragraph (c) of this section, and relevant definitions are provided in paragraph (d) of this section.

(2) *Cases in which foreign corporate status is not disregarded.* Section 367(a)(1) shall not apply, and a foreign corporate transferee shall, thus, be considered to be a corporation, in the case of any of the following:

(i) [Reserved]

(ii) The transfer of property for use in the active conduct of a trade or business outside of the United States in accordance with the rules of §§ 1.367(a)-2T through 1.367(a)-6T; or

(iii) Certain other transfers of property described in §§ 1.367(a)-2T through 1.367(a)-6T.

(3) *Limitation of gain required to be recognized*—(i) *In general.* If a U.S. person transfers property to a foreign corporation in a transaction on which gain is required to be recognized under section